

GAO

United States General Accounting Office
Washington, DC 20548

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Office of
General Counsel

In Reply
Refer to: B-201005

DEC 29 1980

Chief Warrant Officer Donald M. Lesch, USA
Retired

Hanau American High School
APO New York 09165

Dear Mr. Lesch:

Reference is made to your letter dated August 7, 1980, with enclosures, addressed to the Attorney General, in which you seek information concerning the [status of Junior Reserve Officers Training Corps (JROTC) instructors in Europe]. This matter has been forwarded to our Office for reply.

In decision 55 Comp. Gen. 44 (1975), copy enclosed, the Comptroller General considered the question of limitations on the pay of JROTC instructors employed in Defense Department overseas school systems. After analyzing the legislative history of the matter, it was held in that decision that the compensation limitation was the difference between the retired or retainer pay being received and the active duty pay and allowances that such retired member would be entitled to receive if called or ordered to active duty at that location. It was also noted that under 10 U.S.C. 2031(d) the additional amount paid is not active duty pay. Rather, it is compensation paid to a retired member employed in the civilian capacity as a JROTC instructor.

In Brant v. United States, decided April 18, 1979, copy enclosed, the Court of Claims reached the same conclusions as were reached in 55 Comp. Gen. 44. The Court specifically held that under 10 U.S.C. 2031(d), since JROTC instructors not provided Government housing received an amount equal to basic allowance for quarters as part of their compensation, they were not entitled to additional payments for living quarters allowance.

Since the matter of the pay and allowance entitlements of JROTC instructors in the Defense Department overseas school system has been subject to full consideration by the Court of Claims, no further action may be taken by the General Accounting Office.



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We trust this information will serve the purpose of your inquiry.

Sincerely yours,

Edwin J. Monsma

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Assistant General Counsel

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